

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
At Martinsburg**

KARA KOWALSKI,

Plaintiff,

v.

**Civil Action No. 3:07-CV-147
Judge John Preston Bailey**

**BERKELEY COUNTY PUBLIC SCHOOLS, and
MANNY P. ARVON, II, Superintendent, in his official capacity,
RONALD STEPHENS, Principal, in his official capacity and individually,
BECKY J. HARDEN, Vice Principal, in her official capacity and individually,
BUFFY ASHCROFT, Cheerleading Coach, in her official capacity and individually, and
RICK DEUELL, Assistant Superintendent, in his official capacity.**

Defendants.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants, the Berkeley County Board of Education ("the Board"), Manny P. Arvon, II, Ronald Stephens, Becky J. Harden, Buffy Ashcroft and Rick Deuell (collectively referred to as "Defendants"), by and through their counsel, Tracey B. Eberling, Esq., Jason P. Foster, Esq., and the law firm of Steptoe & Johnson PLLC, and move this Honorable Court to grant them summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Plaintiff failed to present a genuine issue of material fact that would support recovery on any of her claims, therefore, summary judgment is appropriate. Specifically, these Defendants are entitled to summary judgment on the following bases:

1. Plaintiff failed to present a genuine issue of material fact with regard to her Due Process claims under the 5th Amendment to the U.S. Constitution or Article III, § 10 of the West Virginia Constitution because the Plaintiff was on notice that her conduct could be punished and she was provided with an opportunity to be heard prior to her suspension;

2. Plaintiff failed to present a genuine issue of material fact with regard to her Equal Protection under the 14th Amendment to the U.S. Constitution or Article III, § 10 of the West Virginia Constitution claim because the Plaintiff failed to come forward with any evidence that she was treated differently than others similarly situated;

3. Plaintiff failed to present a genuine issue of material fact with regard to her Due Process and Equal Protection under the 14th Amendment to the U.S. Constitution and Article III, § 10 of the West Virginia Constitution against the Defendants, in their official capacity, because she failed to produce any evidence to support the elements of an official capacity claim;

4. Plaintiff failed to present a genuine issue of material fact with regard to her supervisory liability claim against the Defendants Manny P. Arvon, II, and Rick Deuell, in their official capacity, because she failed to produce any evidence to support the elements of a supervisory liability claim;

5. Defendants, in their individual capacity, are entitled to statutory immunity under 20 U.S.C. § 6301, *et seq.*, Elementary and Secondary Education Act, from the Federal claims asserted against them;

6. Defendants, in their individual capacity, are entitled to common law qualified immunity from the Federal claims asserted against them;

7. Defendants, in their individual capacity, are entitled to statutory immunity under West Virginia Code § 29-12A-1, *et seq.*, the Governmental Tort Claims and Insurance Reform Act, from the State claims asserted against them;

8. Defendants, in their individual capacity, are entitled to common law qualified immunity from the State claims asserted against them; and

9. Plaintiff failed to present a genuine issue of material fact with regard to her claim for injunction because the Defendants have not and do not forward disciplinary records to other institutions or individuals absent a request by the student.

For these reasons, as further detailed in the memorandum accompanying this motion, the Defendants respectfully request that the Court grant them summary judgment on each of the Plaintiff's claims.

WHEREFORE, Defendants respectfully request that this Court grant their Motion for Summary Judgment and award costs, attorney fees and any other relief deemed appropriate in defense thereof.

Respectfully submitted this 24th day of November, 2009.

**DEFENDANTS,
By Counsel**

/s/ Tracey B. Eberling
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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2009, I electronically filed “*Defendants’ Motion for Summary Judgment*” and “*Memorandum of Law*” in support thereof with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Nancy A. Dalby
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/s/Tracey B. Eberling_____